

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Charlotte Division
Civil Action No. 3:11-cv-00597-FDW-DCK**

THE FAIRPOINT
COMMUNICATIONS, INC. *ET AL.*
LITIGATION TRUST,

Plaintiff,

vs.

VERIZON COMMUNICATIONS,
INC., NYNEX CORPORATION,
VERIZON NEW ENGLAND, INC.,
CELLCO PARTNERSHIP d/b/a
VERIZON WIRELESS, AND
VERIZON WIRELESS OF THE
EAST LP,

Defendants.

**PLAINTIFF’S REPLY IN SUPPORT OF PLAINTIFF’S
MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

Mark Holliday, solely in his capacity as Litigation Trustee (the “Trustee”) of The FairPoint Communications, Inc. *et al.* Litigation Trust (the “Trust”), and the Trust (collectively “Plaintiff”) file this Reply in Support of Plaintiff’s Motion for Leave to File a Second Amended Complaint.

ARGUMENT

Defendants concede that Plaintiff has timely requested leave to file a second amended complaint (DE 62 at 2). Indeed, since Plaintiff had filed its first amended complaint on March 19, 2012, before the Court entered the pretrial order and case

management plan on March 21, 2012, the deadline for motions to join additional parties or amend the pleadings in that order could only have envisioned this motion (*see* DE 52 at 6). Defendants' suggestion that Plaintiff delayed in requesting leave "to cause Defendants to incur expense and delay" is belied by Plaintiff's compliance with the pretrial order deadline for seeking leave to amend; a deadline upon which the parties agreed and jointly proposed to the Court (*see* DE 47 at 3).

Plaintiff's proposed second amended complaint accomplishes two ends, (1) the joinder of Verizon Information Technologies, LLC ("VIT") as a defendant, and (2) the dismissal of its Count III claims against Celco Partnership d/b/a Verizon Wireless and Verizon Wireless of the East LP. The means by which Plaintiff has requested to accomplish these ends are Plaintiff's choice, as the master of its own complaint. *See Lytle v. Griffith*, 240 F.3d 404, 409 (4th Cir. 2001) (recognizing that plaintiffs' choice to sue particular defendants was appropriate).

Plaintiff's proposed amendments are not futile. Defendants argued that Plaintiff's failure to join VIT as a defendant was fatal (DE 55 at 6) ("the Amended Complaint does not name VIT, the Verizon entity that actually received the TSA payments (and thus the alleged fraudulent transfers), a failure that is likewise fatal to its claim"). Joining VIT as a defendant now puts before the Court the entity which Defendants claim was the recipient of transfers which Plaintiff has alleged were fraudulent. Accomplishing the dismissal of Count III by requesting leave to

file a second amended complaint that does not include that claim is likewise hardly inappropriate.

Plaintiff respectfully requests that the Court grant its timely motion for leave to file a second amended complaint, pursuant to Rule 15(a)'s dictate that leave to amend "shall be freely given when justice so requires" and Fourth Circuit precedent liberally allowing amendments. *Galustian v. Peter*, 591 F.3d 724, 729 (4th Cir. 2010).

Respectfully submitted, this 11th day of June, 2012.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing were electronically filed today with the United States District Court, Western District of North Carolina using the Court's CM/ECF system which caused copies to be served upon the following counsel of record.

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This the 11th day of June, 2012.

By: /s/ Jonathan D. Sasser
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